

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

United States of America

vs.

Michael Delbuono

Criminal Action
No. 07-677

STIPULATION

Counsel for the United States of America and Defendant Michael Delbuono hereby stipulate as follows for the purpose of this Court's consideration of Mr. Delbuono's Motion to Reduce Sentence under 18 U.S.C. § 3582(c)(1)(A)(i) (Doc. 295):

1. The medical records attached as Attachment A to the Government's Response (Doc. 296) are authentic and genuine medical records that the BOP maintains as to Defendant Michael Delbuono.

2. He was diagnosed with asthma in childhood. (Attachment A at 2).

3. BOP medical records with an "encounter date" of November 15, 2019 state that he is obese. (Attachment A at 2).

4. The BOP prescribed an albuterol inhaler to control his asthma. The Prescriber Order provides "Don't use daily. Inhale 2 puffs by mouth 4 times a day as needed to prevent/relieve asthma attack (inhaler to last 90 days. If need more, make sick call) PRN x 365 day(s)." (Attachment A at 5)

5. The BOP maintains medical records listing diagnoses using codes from the International Statistical Classification of Diseases and Related Health Problems ("ICD").

6. In Delbuono's medical records from the BOP, under "Resolved," in 2008, the BOP coded Mr. Delbuono's asthma as ICD-9 code 493.9 ("Resolved/Remission"). (Attachment A at 42).

7. In Delbuono's medical records from the BOP, under "Current," in 2016, the BOP coded Mr. Delbuono's asthma as ICD-10 code J45.909. (Attachment A at 42).

8. Both of these codes reflect “unspecified” asthma, i.e., the ICD-10 codes for asthma are:

J4520	Mild intermittent asthma, uncomplicated
J4521	Mild intermittent asthma with (acute) exacerbation
J4522	Mild intermittent asthma with status asthmaticus
J4530	Mild persistent asthma, uncomplicated
J4531	Mild persistent asthma with (acute) exacerbation
J4532	Mild persistent asthma with status asthmaticus
J4540	Moderate persistent asthma, uncomplicated
J4541	Moderate persistent asthma with (acute) exacerbation
J4542	Moderate persistent asthma with status asthmaticus
J4550	Severe persistent asthma, uncomplicated
J455	Severe persistent asthma with (acute) exacerbation
J4552	Severe persistent asthma with status asthmaticus
J45901	Unspecified asthma with (acute) exacerbation
J45902	Unspecified asthma with status asthmaticus
J45909	Unspecified asthma, uncomplicated

See generally <https://www.icd10data.com/ICD10CM/Codes/J00-J99/J40-J47/J45->

9. The CDC recognizes that “moderate to severe” asthma is a risk factor for COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>

10. ICD-10 distinguishes between grades of asthma using certain codes, J45.20 to J45.52.

11. The BOP did not determine what grade of asthma Mr. Delbuono suffers from, as it did not determine an ICD code in the range J45.20 to J45.52. Instead, it applied only a general code for asthma without determining a level of severity.

Stipulated and agreed to:

/s/ Robert Gamburg

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